

(1977) 12 MAD CK 0011
In the Madras High Court
Case No : R.C. No. 1 of 1976

The Chief Controlling Revenue Authority, Madras
Vs

APPELLANT

P.A. Muthukumar

RESPONDENT

Date of Decision : 05-12-1977

Acts Referred:

Stamp Act, 1899 — Article 55, 58, 64, 2(24)
Trusts Act, 1882 — Section 3

Citation : AIR 1979 Mad 5 : (1978) 91 LW 557

Hon'ble Judges : Ramaprasada Rao, J;Natarajan, J;Balasubrahmanyam, J

Bench : Full Bench

Judgement

Ramaprasada Rao, J.—The question involved in this reference made by the Chief Controlling Revenue Authority, Board of Revenue,

Madras is as follows :-

Whether in the circumstances and facts of the case, the document dated 2-7-1973 (Document No. 26 of 1973) of Sub Registrar Office,

Kavandapadi, Erode, executed by the respondent in favour of his father P.N. Appaji Gounder herein styled as a document of trust should be

treated as a settlement deed as defined under Section. 2(24) of the Act attracting stamp duty under Art. 58 of Schedule I of the Indian Stamp

Act.

or in the alternative, we add, whether the deed under reference is chargeable under Art. 64, Schedule I of the Indian Stamp Act.

2. It is common ground that the deed has been duly stamped under Art. 64 of Schedule 1-B (sic) (1?) of the Stamp Act. Before considering the

question posed to us, it is necessary to understand the recitals in the deed. It is common ground that the respondent and his two brothers and their

father partitioned the family properties pursuant to a compromise decree passed in O. S. No. 230 of 1970 on the file of the Court of the Sub-

ordinate Judge, Erode. It is the case of the respondent that subsequent to the said partition. Consequent upon an oral partition between himself and

his minor son, they were enjoying their respective shares separately. In this perspective, the respondent caused to execute the deed in question on

2-7-1973, styling it as a private trust deed and appointed his father, P.N. Appaji Gounder as the trustee to carry out certain directions of his

specifically enumerated therein. We find (a) that the trustee so nominated under the Will is to pay off certain debts of the author of the trust and

administer the property so as to preserve it, without wasting it, (b) that the trustee could improve the property and preserve the same till the lifetime

of the author, for the estate then available to be taken over by his heirs and that (c) the trustee should pay a monthly allowance of Rs. 200/- to the

author of the deed during his lifetime.

3. Apart from the above specific objectives of the trust, we do not find any disclosure of the intention of the purpose for which the deed in question

was executed by the respondent. We however find inbuilt in the deed itself two reasons as to why the author of the trust executed this deed. Firstly

he would say that any attempt at retaining the property himself might lead to dissipation of the same during his lifetime and secondly he had not the

requisite experience or inclination to carry on agricultural operations so as to improve or ever preserve the property.

4. It is in the above background the instrument in question came to light. When the Sub Registrar of Kavandapadi, Erode was asked to register

this document, he felt a doubt whether it would be a bare declaration of trust as it is styled or whether it would be by reason of some recitals therein

be interpreted and accepted only as a deed of settlement within the meaning of Sec. 2(24)(b) of the Indian Stamp Act, chargeable under Art. 55 of

Schedule 1-B (sic) (1?) of the Act.

5. The word "settlement" has been defined in the Indian Stamp Act, but not the word "Trust". Section 2(24)(b) defined the word "settlement" as

follows :-

"Settlement" means any non-testamentary disposition in writing of movable or Immovable property, made for the purpose of distributing property

of the settlor among his family or those for whom he desires to provide or for the purpose of providing for some person dependent on him.

6. We are omitting clauses (a) and (c) of sub-sec (24) of S. 2 of the Act, for, they are not relevant for the purpose. According to Section 3 of the

Indian Trusts Act, 1882, a "trust" is an obligation annexed by the ownership of property, and arising out of a confidence reposed in and accepted

by the owner, or declared and accepted by the owner, or declared and accepted by him for the benefit of another, or of another and the owner.

The instrument in question does not in our view purport to distribute property of the settlor among the members of his family nor did he evince an

unequivocal desire to provide property for some person dependent on him. While interpreting the word "settlement" in S. 2(24) of the Indian

Stamp Act, it appears to us that the emphasis should be on the intention of the author of the trust to distribute the property among members of his

family or to those who are near and dear to him. In the absence of a demonstrative exhibition of that intention to distribute his property among such

members or relatives of his, it cannot be said mechanically by the use of the expressions such as "his heirs" or "his minor son" etc. In a document,

that such is the intention of the author. A trust is an expression of the desire by the author of the trust to vest the property in a body, may be

singular in its feature, for that body to administer it for convenience and for an equitable distribution of that estate of the author as per his directions

contained in the deed itself. By executing a trust the property need not be distributed by the author of the trust. But in cases, as in the instant case,

the declaration of a trust may be made only for purposes of equitable administration of the same so as to preserve it without being wasted as

apprehended by the testator himself. This distinction therefore has to be borne in mind while interpreting an instrument for purposes of imposition of

stamp duty.

7. In *Narendra Sing v. Board of Revenue* AIR 1947 All 141 a Full Bench of the Allahabad High Court had to consider a deed where the owner of

the property transferred some property of his to three trustees who were to manage it on his behalf during his lifetime and who were to make some

arrangement in the event of this death. There were also certain directions contained in the deed in and by which the trustees were to dispose of the

income from the property and give off certain gifts in the nature of dowry to the unmarried daughters of the author of the trust. Even in those

circumstances, the Full Bench of that court took the view that where the deed contemplated only the transfer of management of the estate to the

trustees during the lifetime of the author of the trust and certain arrangements were made by the author in the matter of the distribution of the

income from the properties, it would not be a settlement within the meaning of Section 2(24) of the Indian Stamp Act and it could only be treated

as a declaration of trust and stamped accordingly. The learned Additional Government Pleader, however, relied on the decision of the Special

Bench of the Allahabad High Court in Board of Revenue Vs. Sridhar Advocate, . The facts in that case are certainly distinguishable from the facts

in the Full Bench decision cited supra. In that case the author of the trust desired that the trustee should not only deal with the income. But that the

children of the donor should automatically be the beneficiaries of the trust properties and the available surplus after administration, as was recited in

the main body of the instrument itself. The learned Judges in that case while dealing with the effect of the deed observed as follows :-

The effect of this deed of Trust was that from the date of its execution the two houses would vest in the trustee and so also would vest in him the

rental income accruing from those two houses. This rental income according to the terms of the instrument was to be divided among the various

beneficiaries who were all minor children of the donor. Thus, the instrument clearly contained a disposition of the future rental income of the

property, initially in favour of the trustee, with a direction to him to utilise that income for the benefit of the minor children of the donor. The method

of utilisation was to distribute this income amongst the children of the donor who were all members of his family. In these circumstances, this

instrument has to be held to be a disposition of the property consisting of the future rental income from those two houses made specifically for the

purpose of distributing that property viz, the future rental income, amongst the members of the family of the donor.

One other conspicuous difference between the present case and the case in Board of Revenue Vs. Sridhar Advocate, was that the estate itself was

to revert to the author of the trust after the expiry of the period of twenty years. During which time the trustee was to administer the trust property.

In the instant case, there is no dispositive clause. We have already made it clear, that the quintessence of the definition of the word "settlement" in

Section 2(24)(b) of the Indian Stamp Act is that the property should be distributed among the members of the family of the author of the trust or

should be ordained to be given to those near and dear to him. In the absence of any such clause express or implied to be culled out by necessary

implication from out of the instrument to conclude about distribution of property, either movable or Immovable among the settlor's heirs or

relatives, it would be difficult to hold that such an instrument should be treated as a settlement.

8. We have already referred to the salient clauses in the deed dated 2-7-1973. The author himself felt a doubt whether he would be in a position to

manage his estate efficiently. There was a lurking suspicion in his mind whether by retaining the estate he could preserve it at all. He wanted

therefore a safe media for administration and in order to achieve this objective, he vested his estate in the trustee for the purpose of paying off his

debts, for the purpose of paying him a sum of Rs. 200/- a month during his lifetime, for the purpose of improving the estate as far as possible

during the course of the administration and for the purpose of "his heirs", whomsoever they may be taking over the estate after his lifetime. One

other recital in the deed gains the impression that there was no disposition or distribution in praesenti of the property under the instrument. Clause

(6) of the deed reads thus-""Yerkaneve en minor Makan Makendranukku Veru Bhoomikal Vai-Mozimulam Kodukkappattu Uraiyan Gardian

Anubavitthu Varuvadal Uraiyanukku Indha Chotthukkalil Yedhum Paththiyamillai"".

The necessary conclusion which could reasonably be drawn by a fair reading of this clause is that he is not disposing of the property in favour of his

minor son and that there was no disposition of any interest in his estate in the minor's favour. This is one of the necessary sine qua non to bring an

instrument within the periphery of a deed of settlement. In this view also, we are unable to agree with the Revenue that the instrument in question

has to be understood as a deed of settlement within the meaning of Section 2(24) (b) of the Indian Stamp Act attracting stamp duty under Article

58 of Schedule I of the Indian Stamp Act. The question referred to us is therefore answered against the Revenue.

9. We thank Mr. A.S. Ramachandran for the assistance rendered to us as amicus curiae.

10. Answered in negative.